***THE HONOURABLE SRI JUSTICE P.S.NARAYANA**

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+WRIT PETITION No.18897 of 2006

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% 15-11-2006

Bendalam Appa Rao. …
Petitioner

VS.

$ 1. Bendalam Ram Murthy Naidu and 2 others. …Respondents

! COUNSEL FOR THE PETITIONER: SRI KESANA RAMA KOTESWARA RAO

^ COUNSEL FOR THE RESPONDENTS: GOVERNMENT PLEADER FOR PANCHAYAT RAJ AND RURAL DEVELOPMENT

< Gist :

> Head Note :

? CITATIONS :

1. AIR 2003 SUPREME COURT 304
2. 2005(8) SUPREME 433

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.18897 OF 2006

DATE: 15th November 2006

Between:

Bendalam Appa Rao, s/o late Suryanarayana,
Aged 51 years, Hindu, cultivation,
R/o Palasapuram village, Palasapuram
Gram Panchayat, Sompet Mandal,
Srikakulam District.

… Petitioner.

And

1. Bendalam Ram Murthy Naidu,
   s/o late Abbaya Naidu aged 83 years, Hindu,
   r/o Palasapuram village, Palasapuram
   Gram Panchayat, Sompet Mandal,
   Srikakulam District and 2 others.

… Respondents.

* * *

ORDER:

This Court on 13.9.2006 made the following order:

> " It is stated by the counsel representing the petitioner that he is aggrieved of the imposition of exemplary costs. In view of the same, notice before admission returnable in ten days. Learned counsel for the petitioner is also permitted to take out personal notice on the respondents and file proof of service. List after ten days in motion list."

The matter was adjourned to 25.9.2006 and the matter was again adjourned on 25.9.2006 and is coming up before this Court today.

2. It is stated by the counsel for the writ petitioner that respondents 1 and 2 were served with notices. Learned Assistant Government Pleader for Panchayat Raj represented R-3.

3. The present writ petition is filed for a writ of Certiorari to call for records from the Election Tribunal-cum-Junior Civil Judge, Sompet, Srikakulam District, pertaining to the order and decree made in E.O.P.No.8 of 2001 dated 07.3.2006 and set aside imposition of exemplary costs and costs of the petition awarded in favour of the respondents 1 and 2 and pass suitable orders.

4. It is stated that the petitioner contested as sarpanch of Palasapuram Gram Panchayat elections held on 17.8.2001 against the first respondent. It is also stated that Palasapuram Gram Panchayat consists of two villages namely Palasapuram and Lakkavaram. The first respondent with a margin of 147 votes defeated the petitioner. Thereafter, the petitioner filed E.O.P.No.8 of 2001 on the file of the Election Tribunal-cum-Junior Civil Judge, Sompet, Srikakulam District, against the first respondent stating that the respondents 2 and 3 who were Election Officer Stage-1 and Election Authority to the entire Srikakulam District respectively, did not conduct elections in fair and free manner on 17.8.2001 and also not followed statutory rules and regulations for the elections. It is also stated that the local MLA influenced most of the voters of Lakkavaram village and lifted the voters in mini van bearing No.AP 31P 4105 and Ambassador car bearing No.30T/1011 forcibly. The first respondent released pamphlets and pasted wall posters, which are against to the election rules under Section 216 of A.P. Panchayat Raj Act.

5. It is also further stated that respondents 1 and 2 filed counters

and denied the allegations and the Election Tribunal-cum-Junior Civil Judge, dismissed the E.O.P.No.8 of 2001 on 07.3.2006 and awarded exemplary costs of Rs.5,000/- to each of the respondent as well as Rs.502/- and Rs.500/- in favour of the respondents 2 and 3 towards costs of the petition. Since the term of the first respondent is over, the petitioner is only questioning the imposition of exemplary costs of Rs.5,000/- to each of the respondents as well as petition costs.

6. It is further stated that the learned Election Tribunal followed the judgment reported in **Mahender Pratap V. Krishan Pal and others**[1]. It is further stated that the judgment of the Apex Court referred to supra is distinguishable on facts. It is also further stated that every election furnishes a cause of action and further relied on a decision in **Satrucharla Vijaya Rama Raju V. Nimmaka Jaya Raju and others**[2]. In the light of the same, learned counsel representing the writ petitioner would submit that in the facts and circumstances, imposing exemplary costs of Rs.5,000/- to each respondent and petition costs of Rs.1,000/- cannot be sustained. Several factual details had also been narrated in the affidavit filed in support of the writ petition.

7. On a perusal of the impugned order, it appears that the learned Judge had gone into all the details, recorded findings at length and ultimately made the aforesaid order. Strong reliance was placed by the counsel representing the writ petitioner on Satrucharla Vijaya Rama Raju V. Nimmaka Jaya Raju and others (2 supra) for the proposition every election would furnish an independent cause of action. In Mahender Pratap V. Krishan Pal and others (1 supra) while dealing with an election petition under Representation of the People

Act, 1951, the ground for grant of recount in the light of the intentional false averments made in the petition and the petitioner based on the case of misleading facts, the election petition was dismissed subject to the costs of Rs.25,000/-. It is no doubt true that the court and the Tribunal would be empowered to impose exemplary costs, if the Court or Tribunal is satisfied that the litigation is frivolous or vexatious or like grounds. However, in the light of the facts and circumstances, this court is of the considered opinion that imposition of exemplary costs of Rs.5,000/- may not be just and proper. This Court is not inclined to disturb the other costs which had been imposed except the imposition of exemplary costs of Rs.5,000/-.

8. Accordingly, the writ petition is allowed only to the limited extent setting aside the imposition of exemplary costs of Rs.5,000/-. No order as to costs.

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15-11-2006

L.R. Copy to be marked.

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[1] AIR 2003 SUPREME COURT 304

[2] 2005(8) Supreme 433